Mr. HARRINGTONS CASE, upon the first occasion of his Troubles.

MR. *Harringtons* Father was a great sufferer, both for his Majesty that now is, and his Royall Father: and he himself is both a loyall and conformable person; as is well known to many eminent and considrable persons, who are, and have been ready on all occations, to bear testymony thereof. He is also a lover, of the antient Governments, Laws, and Libertyes of this Nation: and is fully resolved in whatsoever station Gods Providence shall place him, to lay himself out to the uttermost, in the maintnance, and defence of that Government, those Laws, and Lybertys. In this condition and reputation he stood, without the least Objection against him for any thing, untill *March*, 1677. And then he occasionally meeting with two *Scotchmen* returned from abroad, who complained that they had been prest out of *Scotland*, into the *French Kings* service; and that there were severall hundreds of their Country men, as well as themselves, who had been forced from their Houses, Wives, and Familyes, bound together, and so like Gally slaves secured in the publique Goales, not suffering their Freinds and Relations to come near them, and from thence put on Shipboard, and transported into the *French Kings* service; directly contrary to the Addres of the Parliament, his Majestys gracious Answer thereunto, and Royall Proclamation thereupon.

Mr. *Harrington* was extreamly pleased with his good fortune in this adventure, assuring himself, he had now in his hands, to do a very acceptable service both to his Majesty and Parliament, and be an occasion not onely to put a stop to those numerous Supplyes, that dayly went over from these Kingdomes, to the support of the *French Kings* power and greatness, which all good and wise men did apprehend as fatall to us, but also to do this farther service, as to discover those evill men in power, that durst unknown to his Majesty, against his Interest, and contrary to his declared will and pleasure, presume to make use of his Majesty publique Houses, and exercise a power over his Majesties Subjects, as high at the least, as the Law permits to be exercised in the most pressing occasion of the Crown it self. He therefore brought those *Scotch-men* to severall eminent Mem-

bers of the House of Commons to whom they freely and voluntarily made the same declaration, but the extraordinary business of the House of Commons was so great as they could not be called in for some time, which caused him to understand the poverty and mean condition of those *Scotch-men*, and the power and influence of those persons that might be concerned in such an Information, and that if this delay should give opportunity for their being bought off or necessitated to absent themselves, he could not remain without a very great Reflection on him as having appeared with them; he therefore did desire them, and they very willingly and readily did set down in writing the whole Narration, they had before made to him, and those worthy Members of Parliament and took their *Affidavits* upon it, before a Master in *Chancery*.

In all this he though he had performed a meritorious service, and was well assured that nothing he had done, was lyable to be questioned by any known Law; Yet notwithstanding, he was immediately seized by a Messenger, carryed before the King and Council, and accused of subborning those *Scotch-men* to disturb his Majesties Government, where, notwithstanding he thought himself not well treated by my Lord *Chancellour*, and extreamely ill by my Lord *Treasurer*, who used many bitter words and invectives against him, a liberty he thought due to his greatnesse, though not one word of them were true, or could be made good; Yet he carryed himself with all duty, and reverence to his Majesty, and with all respect and caution towards their Lord-ships, but notwithstanding all, he was without any legall cause, committed by Sir *Joseph Williamsons* Warrant, as close Prisoner to the Tower of *London*, where he was denyed a Coppy of his Commitment, the use of Pen, Inke, and Paper, and not suffered to have any Friendes or Counsell to come to him, to advise with, about his Just and Legall defence; and being lodged over the *Tower Ditch*, the illnes of the place putting him into a dangerous sickness, they would not suffer either Physitian or Diviner to have free access to him; after all this, with much difficulty, he conveyed a Petition to the House of Commons, and was by them sent for to their Bar; Where he humbly conceives he fully satisfied the House, that his case was no other, then is herein before recited; but after his being withdrawn, upon what measures Sir *Joseph Williamson* obtained of the House, that no farther care was taken of him, but that he was suffered to be carried back, and remain Close Prisoner

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ſooner as he was before, it onely known to the honourable Houſe it ſelf but this he knows, that whatſoever Sir *Joſeph Williamſon*, or any other perſon did offer againſt him, did not appear to be made good upon his *Habeas Corpus*, for upon the firſt day of the next Term, his Counſell moved for that Writ, and had it granted, and he was accordingly brought up; and the cauſe of his Impriſonment returned the report was the pretended Subbornation: aforeſaid and no other, yet he was enforced by the Court to give four thouſand Pounds bayl to appear the laſt day of the Term, which he accordingly did; and their found an Information put in againſt him, for certain words pretended to be ſpoke three-quarters of a year before; ſo that the Subornation of theſe *Scotch men*, to diſturb his Majeſties Government, and all other diſcourſes of Sir *Joſeph Williamſon* againſt him, for which he had layn ſo long cloſe Priſoner in the Tower to the great prejudice of his Health and Eſtate, are utterly vaniſht and appear as they really were, untrue ſuggeſtions.

Upon enquiry, this Information was put in, by one *Elſden* of *Lime* in the County of *Dorſet*, but in the name of one *Geare*, who was then in the Country, not able to ſhew his head for Debt, but however he was ſent for by a Meſſenger on purpoſe, to own the Information; but as Mr. *Harrington* was credibly informed, and is ready to prove, that *Geare* when he came up, declared, he did not remember the particular words of the diſcourſe then between them, it being ſo long time ſince, and his memory much decayed by reaſon of an *Apoplexy* he hath lately had in his head; upon which Mr. Attorny refuſed to take his Evidence: Yet the Information proceeded ſo far that Iſſue was joyned upon it, notice was given for a Tryall, and Mr. *Harrington* had Feed his Councel, when notice was again ſent, that unleſſe Mr. *Harrington* would conſent to the amendment of the Information, the Tryall ſhould be put off; and only the beginning of *Michaelmas* Term laſt, a *Nolle Proſ.* was entred to the Information, and a ſecond Information, put in; wherein, to avoid the nicety of prooving the words exactly, the words are ſet down in *Latine*, which is of moſt dangerous and deſtructive conſequence, and whatever Preſident it may have in former times, to juſtify it, as there is hardly any thing ſo ill that wants a Preſident, very few Ages having been ſo curious to ſearch out and condemn the ill ones, yet this is againſt Reaſon it ſelf, and the practice of the laſt hundred years, and more, and can by no Preſident be made juſtifyable, ſince there is no

Language but the Translation of it into another, may be by several ways and expressions, and words are capable of various Constructions; so that the introducing this upon the Subject, is a matter of very great consideration, and consequence.

Over and besides all this, matters are so ordered at the *Crown-Office*, and the *Counter*, that he is denyed a Copy of his *Jury*, and could not obtain any, the *Venire* was not returned till the morning before the Trial, and although after the return of the *Venire*, it becomes matter of Record, and ought not to be denied any of the kings Subjects, yet, it was still denied Mr. *Harrington*. At the Trial, which was at *Guild-Hall*, the third of *December*, before the Lord Chief Justice *Ransford*. There were three Witnesses, whereon the Evidence against him solely relied. *Geare*, *Elsden* and *Ramsey*; *Geare* is a Papist, brought out of *Ilchester* Goal, to make good this Charge; his Father died in the utmost necessity, soliciting for Old Arrears and Debts from the Crown, and left this Son nothing but those Pretensions; so that tis not to be wondred, that upon consideration, he recovered his memory, and swore any thing, peradventure that he might eat something. This *Geare* refused to answer such Questions as Mr. *Harringtons Counsel* did ask of him; which were, *Whether he did not deny to Mr. Attorney General, upon the first Information, that he did remember any particular words of Mr.* Harrington's? *And how he came since so exactly to remember them?* To this he refused to Answer, saying, *He was a Witness for the King only, and the Lord Chief Justice did not require him to Answer.*

Elsden the next Witness, was a man notoriously infamous in his own Country, had been an *Informer* against the Kings Party in *Cromwells* days, and was at the Trial proved by several Witnesses to be a *Cheat*, and a *Trapan*, and to have tampred with one Mr. *Plea* to have suborned him to have sworn more than he knew against Mr. *Harrington*. Colonel *Sey* proved, that this *Elsden* did to him inveigh against the Government, and in Discourse afterward told him, *That he had several quarrels with Mr. Harrington, but now he would be revenged on him for all*; and, *that he and a black Dog he had in the Country should worry him*. *Elsden* himself swore, *That he kept him Company so long, only to get some words from him that might be his Ruine or disadvantage*. And over and above all this, since his Prosecution against Mr. *Harrington*, Mr. *Elsden* hath past a Pattern of 200 *l.* *per annum*, out of the Customs to him and his Children, during their

Lives: It cannot be ſaid that this Patent was granted him, or diſpatched the ſooner upon this Conſideration, ſince the Patent recites another Conſideration; yet Mr. *Harrington* doth heartily wiſh the paſſing of his Patent, or his buſineſs with my Lord Treaſurer had been at ſome other time; ſince it was proved at the Tryal, by Mr. *Munday*, that one *Nichols* Nephew to Mr. *Brown*, and principal Witneſs againſt him owned to him: that he had 20 *Guynyes from* my Lord Treaſurer juſt before the time of Mr. *Brownes* Tryall, Mr. *Ramſey* the third witneſſe is now my Lord Treaſurer Sarjent, but formerly went by the name of *Ranſon*, was an Highway man, and being detected thereof, concealled himſelf in Sir *William Smiths* Lead Mynes in *Derbyſhire*. Since changing his name, he kept a little Writing ſhop near *Temple Barr*, from whence for his good qualitiyes he is exalted to this conſiderable employment, and is by my Lord Treaſurer directed to manage *Elſden* in his proſecution of Mr. *Harrington* who from time to time was to bring in writing, the words he hard him ſpeak in Company, and this by the ſpeicall order of the Lord Treaſurer, and my Lord ſpecially directs that *Ramſey* allwayes ſign the Papers that he may thereby know them again. This was ſo admirable a practice, that the Councel againſt Mr. *Harrington*, eſpecially Mr. *Finch*, the Lord Chancelours Son, and Sir *Robert Sawyer* uſed their utmoſt Oratory, to juſtify the *Trappanning* Trade, and how great a part of State Policy it was to encourage ſuch worthy men, and that they ought no more to be accounted Infamous, and yet under favour of my Lord Treaſurer that imploys them, and Mr *Finch* and Sir *Robert Sawyer* that ſo highly commends them, they have ever been accounted moſt deteſtable among all Nations, and the countenancing of ſuch proceedings tend to deſtroy Humanity it ſelf.

But although the Characters of theſe three Witneſſes are very bad; yet they have fortified their Teſtimony as far as twas poſſible, for Mr. *Ramſey* Iweares that he received Mr. *Elſdens* note the day after the words are ſaid to be ſpoken, which he knows by his indorſement with his own hand, of the day whereon he received it, and he then immediately ſhewed them my Lord Treaſurer; but then 'tis to be conſidered, That Mr. *Elſden* gave a note of other words to Mr. Attorney, upon which the form. Information is drawn; nay when Mr. Attorney deſired to alter that Information with Mr. *Harrington's* conſent. The note of the words Mr. Attorney ſent which he deſired to be put in inſtead of the former were yet different from the

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preſent Information; which uncertainty, and variation could not have been had they had by them the words written down the ſame day of the ſpeaking of them.

The words of the firſt Information were, *Our Government is by three Eſtates, and to raiſe Armes unleſs it be againſt all three Eſtates is no Rebellion.* The note Mr. Attorny ſent Mr. *Harrington*, for having his conſent to th altering the firſt Information, were, *Our Government is by three Eſtates, and if Rebellion be not againſt all three Eſtates it is no Rebellion.* The *Latine* words of the Second Information are, *Quod noſtra Gubernatio de tribus ſtatibus conſiſtebat, et ſi Rebellio eveniret in Regno, & non accideret ſore contra omnes tres Status, non eſt Rebellio.*

Mr. *Harrington* was very hardly uſed by the Court in ſeveral Particulars when he offered to ſpeak in his own cauſe. The Lord Chief Juſtice *Rainsford* refuſed to hear him, telling him, this was *Lilburnes* way, and that he ſhould acquaint his Counſell what he had to ſay, and ſpeak by them. Whereas for the Subject to ſpeak in his own caſe cannot by Law be denyed them, nor ought not, eſpecially in Tryalls of this nature, which depends moſt upon matter of Fact, whether ſuch very words were ſpoken and the manner of ſpeaking them; which goes a great way in making the words ſeditionſly ſpoken or not. Beſides in cauſes of this nature, the Counſel may be over awed, and not dare for a Fee, expoſe themſelves ſo far as is neceſſary, for the preſervation of their Clyent, and preſſing the Law very home, may be conſtructed in them a rudeneſſe to the Court.

The next hardſhip Mr. *Harrington* underwent was, That the Kings Counſel having ſpoken, and urged to the Jury for Law, ſeveral things directly contrary to Law, and having laid great weight upon *Gears* Teſtimony, *Elſden*'s being laid aſide, upon the proof againſt him, Mr. *Harrington* deſired leave that he might ſpeak, having ſeveral things to offer to invalidate the teſtimony of *Gears*, which the Lord Chief Juſtice refuſed, unleſs the Kings Counſel would conſent; alledging that no body could ſpeak after them, which Rule cannot in all Caſes be reaſonable and juſt, the Kings Counſel may be alwayes allowed to ſpeak laſt, but if they ſhall, in the diſcourſe they ſhall make to conclude with alledge matter of Law falſly, and wrong to the Jury, which hath not been before ſpoken to nor offered, certainly there is reaſon for a Reply, or if any thing ſhall occur to the perſon concerned, that may tend much to his juſt defence and

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Clearing, he ought not to be denied to be heard. The Methods and Rules of Courts are, and ought to be made for the better dispatch, and not for the destruction and overbearing of mens Causes. The Jury thought this so hard, and the Case left so imperfect to them for want of hearing what Mr. *Harrington* could say for himself, as concerning Geats Testimony; that after some time of withdrawing, they returned and desired of the Court that they might be allowed to hear (if the Court thought fit) what Mr. *Harrington* had to say concerning *Geare*; but the Lord Chief Justice turn'd them back, declaring he would not admit Mr. *Harrington* to speak, since the Kings Counsel did not consent.

Another hardship and a very great one Mr. *Harrington* received, was, that the Kings Counsel in their concluding Speech, and my Lord Chief Justice in his Instructions to the Jury, did alledge, that as two Witnesses were required by the Statute Law to prove words, so one was only required by the Common Law, and not only the Kings Counsel but my Lord Chief Justice urged it so to the Jury; as if upon an Information at Common Law, as this was, they had the same obligation upon them, to find the words spoken upon the Evidence of one Witness, as they had upon two, if the Information had been upon the Statute; Whereas 'tis very true upon two direct Witnesses, the Statute obliges the Jury to find it, but the Common Law leaves the Jury wholly at Liberty, and upon their Consciences betwixt God and themselves they may find it, upon one direct Witness or less Testimony, and they may refuse it upon three direct Witnesses more; and in a case of this nature, the Reason of the Law will tell them, that they should be more than ordinarily satisfied and clear in the business, before they find it, and make a man an Offendor for a word, and deliver him up to ruine for one unadvised pretended discourse. Besides the Lord Chief Justice did not open to the Jury their duty in the Case, but directed them to find whether the words were spoken or not spoken; whereas the Jury might be satisfied that the words were spoken, and yet they could not find the Information; because either out of the circumstance of the discourse, or the nature of the words themselves it did appear to them, that they were not spoken seditiously; for they do not only find that the words were spoken, but that they were spoken with a seditious intent; whereas indeed the very words themselves in this Case, can possibly bear no such construction; but my Lord Chief Justice not performing his duty

In this point, may be the Cause of the Jury's falling from the Error. For how can even the falsest Doctrine against the Government, in a Case that hath, but can never happen again, be Seditiously spoken. When the Jury came back to give their Verdict, several of them were heard to say, They were not agreed, nor satisfied in it; although the noise and haste of the Court quit it over. But Mr. *Harrington* hath several Witnesses that heard them say it at the time, and several of the Jury have since acknowledged it, and several others of the Jury are ready to attest, that they never understood or apprehended, that they had found the words to be seditiously spoken by Mr. *Harrington*, neither if they had understood it, should they so have found it.

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